



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

Pacific coast, in the Canadian northwest and Arctic region, and everywhere below the Mexican border, it is still unknown except sporadically and by special introduction. Its rapid extension within the settlement period he ascribes to the encouragement given by the colonial governments in offering scalp premiums and to the opportunity afforded by the introduction of firearms and steel knives. The earlier trophy was the head, for which the more portable scalp was substituted, a part for the whole, as the warriors became accustomed to more distant raidings under the instigation and leadership of their white allies. In 1636 the Puritans paid for Pequot heads, but in King Philip's War, forty years later, we hear of scalping, and from that period the scalp market steadily rose until in 1722 the price was a hundred pounds apiece in Massachusetts. French Canada and Louisiana, colonial Carolina and Pennsylvania, as well as New England, the northern Mexican states in 1835-1845, and even Idaho forty years ago, all paid definite prices for scalps of men, women, and children.

A chapter is devoted to other trophies of similar gruesome character, ears, hands, bones, the skull temples of the Aztecs, the smoked heads of the Amazon, and the horrible human drums of the Incas. The trophy was most elaborated in the warmer regions where leisure was most abundant.

The thirty-three pages of classified bibliography might almost cover the whole Indian subject, and the accompanying map shows clearly the area of each method noted, in both its original and its secondary extension.

JAMES MOONEY.

The Constitutional History of New York from the Beginning of the Colonial Period to the Year 1905, showing the Origin, Development, and Judicial Construction of the Constitution. By CHARLES Z. LINCOLN. In five volumes. (Rochester, N. Y.: The Lawyers' Co-operative Publishing Company. 1906. Pp. xxx, 756; xvii, 725; xviii, 757; xxvi, 800; 551.)

A BOOK on this subject was greatly needed; and the author's example should be followed by citizens of other commonwealths. That a knowledge of the history of the constitution of his own state is indispensable to every lawyer and statesman who works on broad lines is easy of comprehension. No provision of a statute or of a fundamental law can be construed without a consideration of the conditions that preceded the same, the circumstances that brought it into existence, and the result that it was enacted to accomplish; of the old law, the mischief, and the remedy. No new remedy can be intelligently applied without a knowledge of the history of the evil and of the previous attempts to cure it. The value of such studies to students of sociology and of the history of institutions is now beginning to be appreciated. The great need of a collection of the constitutional precedents in the

states to the successful administration of our national government is not yet generally understood. Yet many questions that have been decided at the state capitals must again arise at Washington; and an opinion thereupon by a state court or an unbroken line of state legislative or executive precedents will frequently be more logical and in closer harmony with the spirit of the Constitution, than a decision when it first arises in a high condition of party spirit at Washington. But many such precedents have never been published, or are reported only in the newspapers of the day; Congressional and state libraries have not done their duty in collecting them; and the searcher for them must dive blindly into a mass of biographies, state histories, annuals, files of newspapers, official documents, and manuscript records with too often no clue to aid him. Until the constitutional history of all the states is written, the Constitution of the Union cannot be adequately understood.

The writer has advantages rare in a historian. He has studied his subject for his own practical use, and he has himself played a part in some of the events that he describes. He was a member of the last constitutional convention. He practised law for twenty years under the previous constitution. For six years he was chairman of the commission appointed to revise the state codes and statutes, and the official adviser upon constitutional questions of three successive governors, Morton, Black, and Roosevelt; and has therefore been enabled to enrich the book by valuable new matter concerning the recall of bills by the legislative houses after their passage, the action of the state executive in the approval and the disapproval of bills, the exercise of the active veto and the pocket veto. His practical experience, however, has not, as too often happens, blunted his zeal and capacity for research into matters which most men of affairs consider of importance only to the antiquarian. The colonial history of the subject is well told and has been thoroughly investigated. Many unprinted manuscripts, including Governor Jay's correspondence, the records of the executive council of the colony, and a number of other documents in the State Library and the rooms occupied by the state officers, have been examined by him. The commission and instructions given Governor Tryon by George III., a copy of the latter having been procured from England, are printed for the first time; and so are the original and the revised draft of the constitution of 1777, the first adopted in the state.

The author has thus produced an interesting and valuable work. The narrative is clear and, even when it describes the party conflicts in which he was actively engaged, is apparently impartial. Expressions of his own opinion on questions of law and conduct are rare and usually sound. There are few accessible authorities which have not been examined and digested.

The work is in five volumes. Although long, it contains little matter that might usefully have been omitted. The first volume, after an introduction summarizing the whole subject, sets forth in full a translation

of Magna Carta, the colonial Charter of Liberties and Privileges, the Articles of Confederation, the Constitution of the United States, and the four state constitutions with their amendments up to 1904. These are followed by a detailed constitutional history of the colony and a description of the state constitutions of 1777 and 1821. Volume II. describes the convention and constitution of 1846, the convention of 1867, the commissions of 1872 and 1890, and the amendments from 1822 to 1894; the third volume, the convention and constitution of 1894 with the subsequent amendments, including those adopted in 1905. These three volumes contain also much valuable information as to legislation and bills affecting cognate subjects. But they cite very few decisions of the courts. These are described in volume IV., which is devoted to the constitution as now in force, including the amendments of 1905, with notes of the decisions and commentaries upon certain provisions. The fifth and last consists of tables of statutes which the courts have held to be constitutional, and of such as courts have held to be repugnant to the constitution, separately arranged, chronologically and by topics; a table of the cases cited; an index of persons; and a general index.

In a review of a work for which the profession and scholars are so much indebted, it seems ungracious to dwell upon its few defects. But the following suggestions may perhaps aid in the preparation of the next edition. The absence of cross-references to earlier and later pages imposes much needless labor. Except in the case of law reports and session laws, there are hardly any citations of the original authorities, not even of the pages of the convention reports, from which quotations are made. This faulty practice has increased of late among small historians. It always tends to cast a reflection upon the accuracy of an author, and to impair the weight of his book as an authority. The translation of Magna Carta, the Federal Constitution, the Articles of Confederation, and some of the speeches at the convention of 1894 are superfluous. There is no reason why more space should be given to that convention than to the more important one which framed the constitution of 1846. There is no explanation of the reasons for the refusal by the people to ratify the constitution proposed in 1867. It would have been beneficial to insert references to the constitutions of other states from which some provisions were copied in New York; and to those that have copied many parts of the New York constitution.

It is surprising that, although there is a short account of the codification of the state laws, and a reference to the subsequent statutory revision, the early *Revised Statutes* of 1830 are only mentioned as an incident in the life of Henry Wheaton, with no description nor even a reference to the important changes made by them in the law of real estate and trusts; that David Dudley Field, the father of American codification, is not named; and that the fusion of law and equity, first made by him in New York and copied from his bills almost everywhere that the common law prevails, is not described.

The author expresses his belief that it would be well if the legislature were empowered to require the opinion of the court of appeals upon the validity of pending bills. And he considers that opinions thus obtained would be binding in later litigation (I. 747), a very doubtful proposition. The experience of other states does not recommend such a constitutional provision. And such opinions, where necessarily the courts are without the aid of argument by counsel interested upon both sides of the question, are rarely as sound as those made in the usual course of litigation. The opinions of the supreme courts of South Dakota and Colorado (*Re Constitutional Provision*, 3 S. D. 548, 54 N. W. Rep. 650; *Re Chapter 6 Session Laws of 1890*, 8 S. D. 274, 66 N. W. 310; *In re Irrigation Resolution*, 9 Col. 620, 21 Pac. Rep. 478) may be upon this point profitably consulted. In 1872 Governor Hoffman asked the chief judge and judges of the court of appeals to express their opinion on the constitutionality of a bill then before him. Chief Judge Church and his associates promptly replied with an opinion worthy of Jack Bunsby, stating that they all agreed that "serious questions might arise upon the bill in its present form" as to such points. The bill was thereupon vetoed by the governor (*Public Papers of John T. Hoffman, 1869-1872*, pp. 336-339). It does not seem that the court strengthened its hold upon the public confidence by giving this extra-judicial opinion. In 1890, when Governor Hill suggested to the Republican legislature a "joint submission of the constitutional questions involved" (in controversy over a certain bill) "to the consideration of the Court of Appeals" (*Public Papers of David B. Hill, 1890*, pp. 75, 79), the two houses did not accept this suggestion, and the bill was vetoed.

Although some of the complaints against the old Court for the Trial of Impeachments and Correction of Errors are quoted, there is no reference to any of its decisions that were plainly based upon political affiliations (*Franklin v. Osgood*, 14 Johnson 327; *Woodworth v. Bank of America*, 19 Johnson 391; Hammond's *Political History*, I. 492, 547). Judge Potter's attachment against a member of the assembly and the subsequent proceedings of that house are fully described. There is no mention, however, of the injunction issued by the late Jacob A. Clute, when County Judge of Albany, at the suit of John McCarthy, forbidding the clerk of the senate from performing certain acts relative to the roll. The reports of the judiciary committee of the senate upon the case contain interesting material concerning the power of the lieutenant-governor as president of the senate, the authority of that house to punish for contempt, and the freedom of the senate from interference by the courts (*Sen. Doc. 1894*, Nos. 71, 72). There is no account of the litigation by the state to recover the money misappropriated by the Tweed Ring from the treasury of the city and county of New York (*People v. Ingersoll*, 58 N. Y. 1; *People v. Fields*, 58 N. Y. 491; *People v. Tweed*, 63 N. Y. 202). The descriptions of the impeachments and proceedings for the removal of judges and other public officers contain

no adequate abstract of the trials nor even of the charges made. The history of the law authorizing actions for injuries causing death would have been better had it contained a citation of the English decisions holding that no such action could be maintained at common law, with an abstract of the technical reasoning upon which they were supported. The notes upon the section of the constitution disqualifying members of the legislature from election to the position of United States senator fail to cite the case of Lyman Trumbull, where the Senate of the United States held that a law of the state of Illinois, which disqualified certain persons from eligibility to that house, should not be followed (*Senate Election Cases, 1789-1903*, 58 Cong., Spec. Sess., Sen. Doc. 11, p. 232).

No reference is made to the action of the legislature in 1799 in reference to the Virginia and Kentucky Resolutions, when it was resolved by each house "that they deemed it a duty explicitly to declare their incompetency as a branch of the legislature of this State, to supervise the acts of the general government."

The decisions upon the power of the legislature over local officers are not analyzed nor explained sufficiently to make the book of much use to a person interested upon this question, which is constantly arising. There is no reference to an article upon this point in the *Albany Law Journal* for 1894 (vol. 50, pp. 349-359); nor, so far as the present writer can discover, to any article in any periodical upon any subject. And there are many upon points affecting the New York constitution. The controversy over the Metropolitan Police act, giving the governor power to appoint the police in New York City and some adjoining counties, is not mentioned; nor the fact that the decision which by a divided court upheld that law (*People ex rel. Wood v. Draper*, 15 N. Y. 532) has been severely criticized (*e. g.*, *Bolton v. Alberson*, 65 N. Y. 50, 54).

There is no description of the causes and author of the amendments to Article III., sec. 18, subdivision 15, recommended by the convention of 1867 and the commission of 1872, adopted in 1874; which forbids the construction of a street railroad without the consent of local authorities and that of one-half the frontagers, or, in case of the refusal of the latter, the consent of the Appellate Division, formerly the General Term, of the Supreme Court. There is no account of the legislation, and a very inadequate citation of the decisions upon this important section which affects so many million dollars of investments.

The collection of authorities on what constitutes a private or local bill is insufficient. It omits *Matter of Church*, 92 N. Y. 1, and *People ex rel. N. Y. Electric Lines Co. v. Squire*, 107 N. Y. 593, in which the court of appeals nullified the constitutional inhibition of passing local bills in certain cases; although those decisions are cited upon other points.

The author should not perhaps be criticized for his exercise of the usual law-book writer's license in citing in his notes *obiter dicta* as decisions. Attention should however be called to the erroneous state-

ment twice repeated (IV. 35, 695), that the court of appeals has held that the legislature cannot compel a municipality to pay laborers whom it employs the rate of wages prevailing in the locality. The case cited, *People ex rel. Rodgers v. Coler* (166 N. Y. 1), merely holds that the legislature cannot compel such payment by contractors for public work. The language, in the opinion of Judge O'Brien, upon which the author relies, was not essential to the decision. And that such payment by a city can be compelled by statute was affirmed by a majority of that court in the later case of *Ryan v. New York* (177 N. Y. 71).

There is no reference to the importance of the novel doctrine laid down in *re Jacobs* (98 N. Y. 98), and since followed; nor any discussions of the decisions, which are merely noted. In fact the treatment of the decisions of the courts seems perfunctory rather than philosophical. This is the least satisfactory part of the book, but notwithstanding contains much that will be of use to the practitioner.

Most of these, however, are minor blemishes, which can easily be corrected. The book is indispensable to all constitutional lawyers, legislators, and statesmen in New York. It will be interesting and useful to every lawyer and man in public life in every part of the United States and to all students of constitutional history and sociology throughout the world. It will be the standard authority upon the subject for at least a generation.

ROGER FOSTER.

The Story of Old Fort Johnson. By W. MAX REID. (New York: G. P. Putnam's Sons. 1906. Pp. xii, 240.)

THE most famous historic house in the Mohawk Valley to-day is probably old Fort Johnson, situated a few miles west of the site of Amsterdam. Not only has this old colonial "mansion" with its surrounding hills and valleys a local interest, but, through the prominence and significant influence of the original owner and his family, the history of the building appeals to a wide circle of readers and students. Persons interested in the preservation and proper care of the relics of our past will rejoice that this historic building has been placed in the hands of the Montgomery County Historical Society. For about a half-century the house was in the possession of the Akin family, but in 1905, in order to settle the family estate, the property had to be sold. Through the munificence of Major-general J. Watts de Peyster, a grandnephew of Lady Johnson, the wife of Sir John, the building was presented to the society. It will become the museum of the society and will house, among other objects, the interesting Richmond collection of Indian relics.

It is unfortunate that better advantage has not been taken of the opportunity to write a good local history on the subject. *The Story of Old Fort Johnson* is an interesting, rambling tale; it is a mixture of history, fiction, ethnology, and gossip. One does not expect scientific